A LETTER TO THE EARL OF ABINGDON:

DISCUSSING A

POSITION

RELATIVE TO A

Fundamental Right of the Conſtitution:

Contained in his LORDSHIP's

THOUGHTS ON THE LETTER OF EDMUND BURKE, Eſq.

TO THE

SHERIFFS of BRISTOL.

By JOHN CARTWRIGHT.

LONDON:
Printed for J. ALMON, PICCADILLY.
M.DCC.LXXVIII.

A

LETTER

TO THE

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OF

ABINGDON:

ON

PROSTITUTION

RELATIVE TO A

Prudential Right of the Constitution:

CONTAINED IN HIS LETTER

TO

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TO THE

EARL

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MY LORD,

THE great knowledge and generous warmth with which your lordſhip has defended our much-injured conſtitution, in your late pamphlet, as well as your frank and unmyſterious manner of treating the great truths which uphold it, give me a natural confidence that, provided your lordſhip ſhall have inadvertently fallen into any error on the ſubject, you will be very far from being unwilling to be ſet right. I think there is one error in your

lordſhip's doctrine: and I eſteem it a material one. I mean with regard to the poſition, that the coloniſts have not a right to *freedom in trade.* (P. 56, 57.*) We muſt not impoſe upon ourſelves by modes of ſpeech; which, though current, are improper and deluſive: and I am happy to find your lordſhip ſo much upon your guard againſt their tendency to miſlead mankind, as you expreſs yourſelf in p. 15.

Your lordſhip very properly aſks (p. 52.) "whether the Americans are Bri-"tiſh ſubjects or not?" I am obliged to anſwer, that, for their being ſo, we have no better authority than the common licence of unguarded ſpeech; which is not underſtood to be deciſive in ſerious queſtions; but that, in ſtrictneſs of language, they are not, or rather *were* not, *Britiſh*,

* My references are to the fourth edition.

Britiſh, but *American*, ſubjects.† *Deſcent*, *relationſhip*, and *amity*, ſeem to me to be quite diſtinct things from *ſovereignty* and *ſubjection*; *confidence*, *partiality*, and *acquieſcence*, from *duty* and *obedience*. They were, as your lordſhip obſerves, (p. 65.) only the ſubjects of the *king*, not of the Britiſh *parliament*; for they had legiſlatures of their own. Their allegiance to the king did not make them *Britiſh* ſubjects; for, were that ſo, then would the Hanoverians be Britiſh ſubjects. But the truth is, that the people of Hanover are his *Hanoverian* ſubjects, the people of Great-Britain his *Britiſh* ſubjects, the people of Ireland his *Iriſh* ſubjects; and ſo, in like manner, the people of America, were his *American* ſubjects.‡ But your lordſhip yourſelf hath

† I ſhould rather have termed them *Britiſh American* ſubjects, but for the tendency in the repetition of the word *Britiſh* to abate the force of the contradiſtinction.

‡ I do not mean to inſinuate that Great Britain's connections with Britiſh America and with Hanover were of

hath proved this for me. The *allegiance* of the Americans, as your lordſhip well diſtinguiſhes, (p. 16, 17.) was due to the *king*; their *obedience* to the *law*; (p. 17.) becauſe that law was derived from the *conſtitution*; which, again, was derived from the *people*, as your lordſhip has alſo ſhewn. (P. 28.) Now, they could not have had *two laws* to obey, nor *two conſtitutions*, nor could their only law and conſtitution have been derived from any *other* people, but muſt have originated from *themſelves* alone. They could not, therefore, owe any kind or degree of obedience to any other law, or legiſlature, than their own; and, conſequently, the claim of the Britiſh parliament (in which they had neither voice nor

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of the ſame nature, becauſe I know that they agreed only in the ſole circumſtance of the reſpective countries having the ſame ſovereign: I only deſire to make thoſe diſtinctions, without which we cannot argue concerning thoſe ſeveral nations, all acknowledging the ſame prince, without confuſion or ſpeaking nonſenſe.

a participation of power in the ſmalleſt degree) to bind them in *any* caſes whatſoever, even in thoſe of *navigation* and *trade*, was totally without foundation in the conſtitution. — The maxim, that "None ſhall be bound by laws but thoſe "who aſſent," being as antient and *univerſal* as nature; || neither circumſtances nor accidents can in any wiſe invalidate or impair it. I am ſure that the planting of a colony cannot: for the coloniſts muſt carry with them their *human nature*, all its *neceſſities*, all its *privileges*. Freedom in trade is, doubtleſs, a right of nature; for it neceſſarily reſults from the poſſeſſion of property. That which is a man's own, he may barter or ſell to any one; and no law to the contrary can be juſt, except it have the aſſent of himſelf, or *his repreſentative in the legiſlature under which he lives*. If colonization could overturn one conſtitutional principle, it might all the reſt.

|| Legiſl. Rights of Commonalty, p. 97.

reſt. If it could debar a man from his right to *freedom in trade*, it might equally deprive him of his right to the ſecurity of his *property*, his *liberty*, and his *life:* and there are men who do actually apply the doctrine in this extenſive ſenſe; or why have we *taxed* the colonies, why have we *abrogated their free conſtitutions*, *overturned their judicatures*, *proſcribed their commerce*, and, finally, fallen upon them with *fire*, *ſword*, and *ſavage barbarities*, becauſe of their diſputing our authority? It will preſently appear that our claims over the colonies, without carrying them the length of internal taxation, might have been fatal to their liberties, and therefore were unwarrantable.

The foregoing conſiderations may lead your lordſhip to perceive that your diſtinction, between "ſubjects *within the* "*realm* and ſubjects *out of the realm*," (p. 56.)

(p. 56.) is what the conſtitution will not juſtify. The Americans were no otherwiſe the king's ſubjects *out of the realm*, than as the Iriſh or Hanoverians. Now, though they were the ſubjects of the *king*, the *king* never preſumed to raiſe upon them this external *taxation*, by reſtricting their trade, navigation, and manufactures: but it was the *parliament*, whoſe ſubjects, your lordſhip admits, (p. 65.) they *were not*; and who had, in truth and equity, "no more to do with "them," *as ſubjects*, "than the king of "France or the king of Spain had." (P. 52.) Although, as *kindred and allies*, had they known the value of that double connection, they might have made them infinitely more beneficial to the ſtate, than by any poſſible exerciſe of dominion over them.

In pages 30 and 56 you ſay, my lord, and I agree with you, that "freedom

" in trade § is a fundamental right of " the conſtitution." But how is it *a fundamental right*, if any other people or legiſlature can *of right* take it from you, or keep it from you? Reaſon, juſtice, and the conſtitution, will bear me out in maintaining, that the coloniſts always had as much right as ourſelves to freedom in trade. That this country took advantage of their original weakneſs, to ſeize, by virtue of her own *will and pleaſure*, a monopoly of their trade, and that ſhe kept poſſeſſion of that monopoly till 1764, I very well know: but " poſ- " ſeſſion does *not* paſs with me," as it does with Mr. Burke, " for a title," (p. 51,) in any caſe where a fundamental right

§ I think it beſt, however, to avoid all unneceſſary expreſſions of limitation where liberty is concerned: they contract our ideas and confuſe the ſubject. The diviſions of phyſical, moral, civil, and religious, are very ſufficient. There is nothing relating to the rights of freedom in trade but what is comprehended under the head of civil liberty. Trade, within ourſelves, muſt be regulated by *laws*; with other nations, by *treaty*.

right of humanity is in queſtion. I will even admit that there were no deſigned advantages taken by this country originally: that what was done *(however erroneous in its own nature)* was *thought* juſt and reaſonable by *both* parties: that, for protection given, it was fit an equivalent ſhould be returned: and I grant, likewiſe, all that has been urged with regard to the facts of *poſſeſſion* on our part, and *acquieſcence* on theirs:¶ but yet I muſt maintain that all this will not overturn *a fundamental principle of the conſtitution*, and *right of nature*. This reſtraint upon the commerce of the colonies being

¶ "A bad cuſtom, or uſage, is to be aboliſhed: "becauſe, in cuſtoms, not *length of time*, but *ſolidity* "*of reaſon*, is to be conſidered." Co. Lit. 141. Hence it was, that, in my tract of *American Independence, &c.* I endeavoured to urge the neceſſity of acquiring juſt and accurate ideas of *our connection* with the colonies, inſtead of the inconſiſtent notions which prevailed, of granting an American *magna charta* for all times to come, (Appendix, p. 5,) and of eſtabliſhing with them *a grand Britiſh league and confederacy*. (Poſtcript, p. 32, 40.)

the ſole act of *our* legiſlature, an *impoſition* of an *extraneous* power was always, in fact, a violation of right and equity. In order to its having been equitable and obligatory, it ought to have been agreed upon in *treaty*; the colonies, as *free* and *independent contracting parties*, *voluntarily engaging themſelves* to perform a certain condition for a ſuitable conſideration.

The houſes of lords and commons, we know, have frequent *conferences*, for treating upon and adjuſting points in diſpute between them concerning their reſpective rights and privileges, which neither of them think fit to hold and have decided at the will of the other. It is this parliamentary, this liberal, mode of proceeding, that ought to have been adopted, by the two houſes, jointly, on one part, and the American aſſemblies, collectively, on the other part; the king, as equally related to both parties, ſtanding

ing neuter, as he does in all the conferences here between the two houſes.

I have already ſaid, that "Trade, "within ourſelves, muſt be regulated "by *laws*; with other nations, by *treaty*:" it remains, then, only to determine, whether the American colonies are diſtinct nations from Great Britain, having legiſlatures of their own; or whether they, together with Great Britain, form only one nation, living under one legiſlature; and your lordſhip very juſtly tells me, p. 65, that *they* are not ſubject to *our* legiſlature: it ſhould follow, then, that *our* legiſlature can have no right to regulate *their* trade.

I do not forget all the jargon that has been uſed about grants and charters, and mother-country; but, as I never thought that mankind had need of charters for leave to wear their noſes; or that our mothers

mothers had any right to put out one of our eyes, or even to cut off one of our fingers; ſo I confeſs I paid no regard to thoſe ſolemn nonſenſes, but always ventured to ſpeak of *American* liberty preciſely in the ſame terms as of *Britiſh* liberty;* and upon the ſame principle I ſhould maintain, that the people of France, Turkey, and China, and every nation upon God's earth, have a right to a full and entire freedom.

One grand error, which Engliſhmen in general have fallen into, has been to conſider and to treat of our late connection with the colonies, and the old practice of government relative thereto, as a conſtitutional arrangement, a wiſe and equitable ſyſtem of policy: whereas it was, in ſome material points, an unconſtitutional

* Letter to E. Burke, eſq. ſubjoined to American Independence the Intereſt and Glory of Great Britain, p. 6, 7.

ſtitutional plan; a crude, imperfect, undefined, and undefineable, ſcheme, big with the ſeeds of confuſion and diſorder. It was not the effect of ſufficient forethought and complete ideas of our conſtitution, or it might have continued an harmonious connection to the end of time:† but it was the child of careleſsneſs and confidence, affection and mutual intereſt; and its grand defect, — *that of the colonies not having an acknowledged independency, which is an indiſpenſable requiſite to a ſtate in which there is a complete legiſlature*, — hath, at length, produced all the miſchief which we have *beheld*; and laid a foundation, I fear, for ſevere calamities that we have yet to *feel*. — Mark here, my lord, I entreat you, the fatal effects, the ſure, though at firſt unſeen, conſequences of that doctrine of hell,—*expediency*. While this beſotted country was pampering herſelf upon the monopoly

† Amer. Indep. 64—72, and Poſtſcript, 32—48.

monopoly of American commerce, who thought a day was coming when ſhe would have to pay for it with intereſt? who dreamt that the millions it produced in a century would ſo very ſoon be ſpent upon it in two or three campaigns? who, but allowed that ſuch a monopoly was *extremely expedient?* — But the poſſeſſion of this monopoly, (taken by *force*, and held *unjuſtly*,) together with ſome other of the rotten fruits of *expediency*, which I could name, filling us with avarice and venality, with pride and arrogance, with injuſtice, violence, and tyranny, are now in the end making us a terrible example to mankind, of a nation puniſhing itſelf by the inſanity of its counſels and its own wicked hands, in order to juſtify the irreverſible decrees of Providence. How can they be truly the advocates of injured America, who, even to this moment, inſiſt upon this being *our right?* And how much leſs, again, they who obſtinately

perſiſt

perſiſt in denying demonſtration, by defending the *Declaratory-act*, another moſt unhappy child of *expediency?* of a ſhort-ſighted, unwiſe, diſhoneſt,‡ expediency!

C

‡ Let not this expreſſion ſhock lord Rockingham and his friends more than it ought to do. His intentions, I grant, might have been very good, and the effect ſhewed that *America was ſatisfied* with the repeal of the ſtamp-act, and did not think the pretenſions of the other worth her notice, ſo long as they ſhould not be acted upon. But that *America* was ſatisfied was not ſufficient; *truth* and *rectitude* ought alſo to have been ſatisfied: on no other principles can there be any *prudence* or *ſafety* in our actions. Now the very office of this unfortunate bill was to declare, and enact, in the face of mankind, AN UNTRUTH. As a *man*, his lordſhip, I might anſwer for it, could not have brought himſelf to have aſſerted an untruth on any pretext of *expediency:* no, not to have ſaved his life:—and why?—becauſe it would have been baſe and diſhonourable. Has God, then, given one law to men, and another to miniſters? Can the ſame action deſervedly ruin the fame of an individual member, and yet be right and honourable in the whole houſe of parliament?—No, it aſſuredly cannot: and God has not only implanted a ſenſe of right and wrong in the breaſt of man for his ſecurity againſt immorality, but, ſeeing the neceſſity of giving it the moſt *abſolute* and *univerſal* authority, in order to prevent our own *reaſon* from miſleading us, he has made it an expreſs declaration, in the revelation of his will,

pediency! When will miniſters of ſtate learn to truſt in the declarations of God?

will, that "*the condemnation is juſt* of thoſe, who do e-"vil that good may come." As *a miniſter*, therefore, it was equally incumbent on his lordſhip to have ſtrictly obeyed the moral law. I know but too well that this is a doctrine hard to be ſwallowed by ſtateſmen; and that it is ſaid there are ſuch amazing difficulties and hidden obſtacles in the way of every miniſter, that *he cannot* always do what he knows to be *right*, but *muſt* ſometimes do that which he knows to be *wrong*. Shocking as this aſſertion appears, I acknowledge that, *in the preſent ſtate of things in this country*, it is true; but I muſt ſtill maintain that it affords no juſtification;—*becauſe the ailemma is of the miniſter's own making*;—becauſe the government of this injured, this inſulted, this ruined, country, is ſyſtematically carried on, *under all adminiſtrations*, by CORRUPTION.—A ſyſtem this, for its *folly* as well as its *iniquity*, which is a diſgrace to rational beings, and by means of which, the ſorrieſt driveller in the kingdom, were he a prime miniſter, might make his will the law.

In defence of the declaratory-act it is ſaid, that, had it not been agreed to by lord Rockingham, as a condition for his opponents' giving their aſſent to the repeal of the ſtamp-act, 'an immediate war with America 'was inevitable.' To this I muſt reply, that nothing ſhort of *inſpiration from heaven* could poſſibly have made that *certain* to any man: and, though it even had been *fore-known of a certainty*, yet nothing ſhort of *a poſitive command from heaven to diſpenſe with the*

God? When will they be taught that *daring to do right*, be appearances what they may, is the only wiſdom?

the law of God could have juſtified the miniſter in ſetting up an UNTRUTH as a LAW; but it was his duty to have held ſtedfaſtly to truth and juſtice, and to have been fearleſs of the conſequences. Now it is very material to remark, that the *ill* conſequences,—*war and diſ-union*,—which he thought to avoid by this meaſure of *ſtate-expediency*, —this *little wrong*,—*this trifling evil*,—have nevertheleſs followed: and the good conſequences,—*peace* and *reconciliation*,—which he hoped to bring about, have not been ſecured. Stubborn *rectitude*, thou couldſt not have been a worſe politician! *Expediency*, thou art certainly a deceiver!—— Nay, the very *condition*, on which the two acts, like rabbits, a good one and a bad one, were coupled together, proved to be *a ſnare*, and the marquis fell into it: the declaratory-act had not long been printed off before his miniſterial heels were tripped up, and this very act, *containing every principle they wanted*, made the *immediate engine*, in other hands, of doing effectually that very miſchief he had laboured to prevent. It is, I maintain it, with this act, as their *grand engine*, that they have already done ſo much miſchief, and are ſtill doing it with a vengeance. *Expediency*, thou art a traitor; and henceforth let no honeſt man put his truſt in thee!

Now, had lord Rockingham and his friends, in their trying ſituation, when the king's friends divided againſt the king's miniſter, turned their thoughts towards

Let it, however, be ſome ſmall conſolation to us, that our errors and misfortunes will

wards the principles of *rectitude* inſtead of thoſe of *expediency*; and upon canvaſſing, as was their duty, the title of Great Britain to her extraordinary claims over America; and, finding them *abſolutely ſubverſive of the conſtitution*, as they certainly are:—had they then acted accordingly, and upon the ſound foundation of *truth* and *juſtice*; had they been firm and inflexible in maintaining the *rights* and *liberties* of the coloniſts, they might, in all human probability, have actually prevented this iniquitous war, by taking away *its foundation*, which lay ſolely in a few logical quibbles upon words, and in the *abſurd prejudices of the people*, which none but a few obſcure inſignificant perſons, like myſelf, attempted to remove, but which would have vaniſhed, like a morning vapour, before the honeſt eloquence of a few reſpectable men in each houſe of *parliament*. Thus might they have changed the nature of our connection with America from unnatural to natural, from unjuſt to juſt, from impolitic and dangerous to wiſe and ſafe, from precarious to permanent, and have preſerved entire that aſtoniſhing bond of partiality and affection to old England, which made every American on that wide continent call this country his HOME; in which ſingle, ſimple, attractive, word, there was infinitely more binding force than will be found in all the navies, armies, and acts of parliament, which this proud nation can ſend acroſs the Atlantic.

Perhaps

will ſerve to inſtruct futurity in the ſcience of civil government, and tend to beſtow upon poſterity that almoſt-perfect freedom, which muſt neceſſarily reſult from a government adminiſtered according to the true principles of the Britiſh conſtitution, whenever that ſhall be allowed to bleſs either this or any other nation.

What I have already ſaid may, perhaps, have proved, that *Great Britain*, *i. e.* the Britiſh parliament, hath no right to make laws for reſtraining the trade of *America:* but the proof will be ſtill

Perhaps there never was, in any age or country, a political incident which afforded a more remarkable warning to miniſters of ſtate, againſt adopting any meaſure, how well-meant, how apparently harmleſs, how ſpecious ſoever, on the principle of *expediency* unſupported by *rectitude*, than this of the paſſing of the *Declaratory-act*. I hope it is now ſeen in this light by lord Rockingham himſelf: becauſe, as he bears the character of being a man of integrity, he may, by relinquiſhing former errors and inadvertences, be hereafter an uſeful miniſter to his king and country.

ſtill clearer if we examine the queſtion in another point of view. By the very diſtinction of *internal taxation* from *external taxation*, which hath been uniformly inſiſted on by all parties, we muſt underſtand, that every reſtriction upon commerce and manufacture is a *tax:* and the reaſon is, becauſe it ſtops money, which, if commerce and manufacture were free, *would come into the pockets* of the people. Nay, in caſes where duties were here levied upon the exportation of articles which the coloniſts were prohibited from getting elſewhere, it was in the direct form of an *internal* tax: ſuch was the twelve-penny, and at preſent the three-penny, duty upon tea, *&c. &c.* Now I cannot myſelf ſee the great propriety of the above-noticed diſtinction, nor the uſe of it,— "*except to miſlead mankind.*" The latter practice is evidently againſt every conſtitutional principle of taxation; and

I muſt

I muſt needs think alſo that, to *impoſe* a reſtriction upon my trade, *without my conſent*, and thereby to prevent money coming into my pocket, is ſo near akin to the taking it out of my pocket againſt my will, that it can be no other than injuſtice. This is no metaphyſical diſtinction: it is a practical diſtinction that comes home to men's pockets, to their feelings, and to their common-ſenſe; and it aſcertains one of thoſe rights for which the Americans are *now* in arms.‖ If ſuch a levied duty, or ſuch a reſtriction, be a *tax*, it is very immaterial whether it be *external* or whether it be *internal*: the proper queſtion is, whether it be *legal* or *illegal?* whether it be conſiſtent with

‖ At firſt they only took arms in defence of Mr. Burke's "*ſubordinate liberty*:" but our conduct ſoon convinced them, that they muſt either ſubmit to a *total ſlavery*, or they muſt fight their way to a full and *unlimited freedom*: they have wiſely choſen; while our conduct, either with regard to the wiſdom of it or the rectitude, is calculated only to cover us with ſhame and diſgrace.

with *freedom*, or eſtabliſhes *ſlavery*? To be *legal*, it muſt, firſtly, be *given* and *granted* by him who pays it, and not once for all and *for ever*; but, ſecondly, he muſt retain the power of *diminiſhing* it, and even of *with-holding* it altogether at any future juncture if he ſee occaſion; and not only ſo, but, thirdly, the pocket of him, who is his immediate agent for making this gift and grant, muſt alſo be taxed in common with all the other pockets out of which the contribution is to iſſue: not one of which three requiſites to legality is to be found in our mode of *externally* taxing the colonies, by what we call our acts of navigation and regulation of the American commerce.—I laid it down near four years ago as a true principle, and farther reflection has convinced me of its ſolidity, that planting of colonies and extending of empire are by no means one and the ſame thing, but totally diſtinct: the confounding

founding of theſe ideas has been one of the grand cauſes of our preſent unhappy condition.* But your lordſhip ſays, (p. 57.) "They ſurrendered, from the firſt, "one of the fundamental rights of the "conſtitution, to wit, freedom in trade. "This they gave up, and this they put "into the *monopolizing* hands of their "brethren here, as the gift of coutribu-"tion, for the price of protection." I have elſewhere ſhewn that "a funda-"mental right of the conſtitution" (and the conſtitution in this caſe is only declaratory of the right of nature) "*cannot* be "ſurrendered."¶ So far as this ſuppoſed ſurrender may have been conſidered as a *bargain* between the ſtate here, and the firſt emigrants who had accepted their reſpective charters, it is certain that no ſuch bargain could have taken place with-

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* American Independence, p. 22.

¶ Legiſlative Rights of the Commonalty vindicated, p. 2, 58—60.

out having been void in its own nature, for want of the eſſential principles of validity. From this country there was only *a vague promiſe of protection*, without any help or remedy for the colonies, in caſe of non-performance: and, in return, they are ſaid to have ſurrendered for ever *a fundamental right of nature*; carrying with it a very heavy contribution of property, and involving in its conſequences the liberty of their deſcendants; for which no poſſible equivalent can be given. According to this ſuppoſed bargain, *we* were to be the ſole interpreters reſpecting this protection and this contribution: *they* had only to liſten and to *acquieſce*;—that is to ſay, *obey*. *They* were to leave themſelves wholly at the mercy of our tender conſciences, and hold their commerce on the admirable tenure of our "civil "diſcretion;" while *we*, forſooth, were to carve for ourſelves; to be judge, jury, and executioner, over them, in our own cauſe:

cauſe. Where, in ſuch a covenant, is the indiſpenſible *quid pro quo?*—Where the equal ſecurity to both parties?—Where the legal appeal or remedy in caſe of diſſatisfaction or injury?——As nothing of this kind exiſts, ſo the idea of the coloniſts having, "from the firſt, "ſurrendered their freedom in trade, as "a contribution for the price of protection," (p. 57,) muſt be a miſtake; for it is totally without any foundation in reaſon, juſtice, or the conſtitution.—But, if, notwithſtanding the natural defectiveneſs and inſufficiency of this ſuppoſed bargain, the *fact* ſhould be ſtill inſiſted on, I would gladly know where the *actual covenant* is to be met with, and who were the *parties* to it. I am inclined to imagine, that the words, to which have been given this illegitimate conſtruction, are only to be found ſcattered here and there in ill-conſidered expreſſions and *ipſe dixit* ſenſes, through

writings that have not authority competent to the caſe, and that the idea has only thence originated by implication, inſtead of having been any where fully, formally, and legally, aſcertained. I know of no *treaty* with the coloniſts by any miniſter of this country and ratified by parliament; and, as to *acts* of parliament, their authority, as your lordſhip knows, (p. 65.) extends not ſo far. They muſt be totally out of the queſtion; and yet it is *parliament* that is pretended to be, and has thought itſelf, the party to this covenant: for no one ever dreamed of the *king* having a right to bind the manufactures and commerce of the colonies at his will and pleaſure. And, on the other hand, the ſurrender ſpoken of would have been an act by which no original ſettler could have bound his diſcendants, as it would have been contrary to the cleareſt principles of free government, and the unalienable rights of men. The truth is,

that

that no ſuch covenant could have taken place, for want of equitable principles to give it validity; and that none of the ſuppoſed parties could have had powers competent to ſuch an act. True it is, alſo, that error, prejudice, confuſion, and fallacy, have all along been at the bottom of the buſineſs, and that we muſt boldly reject the unſound precedents of ages built on this deceitful foundation, and totally diſregard whatever hath been wrongfully practiſed ſince the very origin of the colonies, before we can eſtabliſh juſt maxims, and act upon conſtitutional principles.——*Free agency* is an inſeparable adjunct to *rationality*, and it is an indiſpenſible moral obligation to aſſert and maintain it. To ſurrender a fundamental right is to throw away the powers of ſelf-preſervation, and to enſlave poſterity. If theſe external taxes, levied through the medium of our laws of trade, had been *juſt and neceſſary contributions*,

butions, as your lordſhip ſeems to ſuppoſe they were, (p. 57,) they ought, as above remarked, to have been *given* and *granted* by the coloniſts, from time to time, with their own conſent, and proportioned by their ſole judgement, in ſuch manner as to have had a ſuitable check and controul over Great Britain, who had the diſpoſal of them, and was, without doubt, accountable for the application of them as much as the king is for the money given and granted him here by the people. Neither had they any ſuch check or controul, nor was their contribution truly *a gift*, as your lordſhip has apprehended, but was claimed, taken, and uſed, by us, as *a debt* and *a right*. They *acquieſced*, it is true: and, even ſince they have had armies to conteſt their rights, they proffered to continue that acquieſcence; but this only becauſe they judged it *prudent*, and were determined to ſhew their moderation:

deration: for they by no means acknowledged the right.

The words of the Congreſs are, as your lordſhip has quoted them, (p. 61.) "We chearfully conſent to the operation "of ſuch acts of the Britiſh parliament, as "are, *bona fide*, reſtrained to the regula-"tion of our external commerce, for "the purpoſe of ſecuring the commer-"cial advantages of the whole empire to "the mother-country," &c. &c. Here, indeed, was an opening for a *treaty*, by which a *valid* covenant might have been made between us, for their granting a contribution adequate to the protection we were to afford them; but no ſuch treaty was concluded, no ſuch covenant took place: their offers, including this of acquieſcing in our pretended authority to reſtrain and regulate their commerce, were rejected; and, therefore, if we had not that right before, we have it not now.

now. When I ſay that a *valid* covenant might have been made on that occaſion, I do not mean by having *taken the Congreſs at their word*; becauſe their offer exceeded what they could poſſibly have had legal powers to fulfil, except under the limitations I have ſhewn to be eſſential to ſuch an act, notwithſtanding the inſtructions of their conſtituents; ‖ and was evidently the effect of an exceſs of moderation and prudence, not to ſay of a pardonable fear. Had we taken advantage of them, our conduct would have been ſimilar to that of a tyrant huſband, who extorts the ſeparate property of his wife, by putting her in fear of her life from his rage, or of perpetual ill uſage from his brutality.

What we claimed, what we practiſed, and what, in a courſe of time, *muſt* have been the fatal conſequences to American liberty, I fear we have not, on this ſide of

‖ Legiſlative Rights of the Commonalty, p. 60.

of the Atlantic, examined with ſufficient impartiality.——We impoſed upon their ſhipping round-about voyages attended with certain loſs, (particularly in fruit and other periſhables,) dangers, and ſometimes ſhipwreck :— we prohibited them from manufacturing the commodities which *nature had beſtowed upon them* :—and we not only compelled them to take our manufactures *only*, but we laid upon thoſe goods what duties *we* thought fit.——A French edict, compelling every wretched houſekeeper to buy, of the farmer-general of the taxes, a certain quantity of ſalt, whether he could uſe it or not, we have juſtly reprobated, as the moſt aggravated tyranny: but, while ſuch as theſe were our practices towards the coloniſts, we had no right to reproach the tyranny of France.——— But this was not all: —— we would not even ſuffer them to take ſhelter in their own frugality, from the diſadvan-

tages of a commerce which kept them always deeply in debt. We conſtantly influenced his majeſty to refuſe his aſſent to every colony-bill that could operate in the nature of a ſumptuary law, becauſe of its tendency to diminiſh *our* trade. Nor could we even ſtop here, extravagant as it may ſeem; but, having paſſed through all the minor gradations of injuſtice, and becoming thoroughly corrupted, *as is always the caſe, by the exerciſe of an arbitrary power, againſt which their is neither check nor controul,* we daringly attempted to rifle their very pockets of their laſt ſhilling. * Surely,

a

* In page 30, your lordſhip ſays, in a note: " It " may be farther obſerved, that, as it was not to be " ſuppoſed that parliaments, *whoſe rights were pre-* " *ciſely the ſame* with thoſe of the people, could poſſi- " bly enact laws ſubverſive of thoſe rights; ſo, the " *original compact* ſeeming to require no other ſanction, " no other agreement between the legiſlative power " and the people was ever thought of; but now, " CORRUPTION, that ſelf-devouring monſter of " the ſtate, making freſh covenants neceſſary, it is to

" be

a nation thus reſtricted, thus ſhackled, thus bound, by people they never ſaw in their lives; even leaving out the laſt article of internal taxation, without any figure of ſpeech, might be ſaid to be enſlaved! And I muſt ever deny that the

" be hoped, that the ſame *explicit, unevaſive, expreſs,* " contract, which exiſts between the king and the " people, will ſoon, very ſoon, ſubſiſt between the " parliament and the people."

If there be this ſtrong neceſſity for reſtricting the aſſumed powers of parliament, in favour of even *its creators,* with whoſe rights its rights are *preciſely the ſame,* how much more is it neceſſary to ſcrutinize its aſſumed authority over a people, who, far from deputing *this* parliament to legiſlate for them, have ever delegated *all* their authority to *other legiſlatures*; and whoſe rights are ſo much *at variance* with the rights of *this* parliament, in a great variety of inſtances, that, by depreſſing and ſhackling *their* commerce, the commerce of *its members and their conſtituents* is advanced and benefitted: or, in other words, that, by keeping the coloniſts *poor*, they themſelves become *rich?* Is not, then, in this caſe, an *explicit, unevaſive, expreſs,* CONTRACT, become abſolutely neceſſary?——— CONTRACT, I ſay, in which the American people ſhall be *free* and *independent contracting parties,* in like manner as the people of England have ever been, and ought to be, in contracting either with their kings or their parliaments.

crown's original title to the ſoil and ſovereignty of America, that its grants and charters, and all the other rubbiſh that hath been produced by way of foundation, could rightfully eſtabliſh ſuch a flavery, or indeed a ſubverſion of any one "fundamental right of the conſtitution" and of nature.† The premiſes *muſt be falſe* which lead to ſuch a concluſion.

If the great maxims of our law and conſtitution, if the fundamental rights of nature, are to be our guides in forming our notion of *the late connection* between this country and her colonies in America, we

† There is, perhaps, no one political ſubject upon which there has been written ſo much nonſenſe as upon that of the original rights of ſovereignty over countries, under the ſeveral heads of diſcovery, occupancy, conqueſt, and treaty. In one of our modern voyages to the ſouthern hemiſphere, an officer very gravely ſets his foot upon an iſland, *full of inhabitants*, and cries: 'In the name of king George, I take poſſeſſion of 'this iſland and *all the iſlands in ſight.*'——Such are the ridiculous claims upon which kings ſpill the blood of mankind!

we muſt neceſſarily, as I conceive, admit that, *de facto*, it was *a ſervitude* on their part, and *an unwarrantable domination* on ours, not to be authorized on any principle of reaſon and free legiſlation; and that, *de jure*, it was a right inherent and unalienable in the coloniſts to have had a full and entire legiſlative independence, whenſoever they ſhould have demanded it: ſo that, when the miniſters of this country talk of the *conſtitutional ſupremacy* of this kingdom, and the *conſtitutional dependence* of the colonies, they appear to me to talk arrant nonſenſe, and conſequently it is impoſſible I ſhould be capable of underſtanding them.* Who ever heard of *conſtitutional tyranny* or *conſtitutional ſlavery?* or what Engliſhman

* Endleſs are the abſurdities by which the nation hath been deluded throughout the whole buſineſs of this unhappy conteſt: as, *virtual repreſentation*, *external taxation*, *imperial rights*, *parliamentary omnipotence*, and ſuch like phraſes, equally a diſgrace to commonſenſe and the conſtitution.

man will endure to hear the epithet of —*conſtitutional*— prefixed to the name of any *ſubverſion of the rights of free men?* If I have proved that our navigation-acts and colonial reſtrictions were *oppreſſive* and *iniquitous*, I hope I have proved that they COULD NOT BE *conſtitutional*, and that I need not prove that a renewal of them would be impolitic and ruinous.

If report may be credited, the earl of Chatham is ſhortly to take upon him the conduct of our diſpute with America; and it is given out that he means to reſcind thoſe which have been called the *obnoxious* acts of parliament, paſſed ſince 1763; and then, retaining only *the navigation-acts* and *the claim of reſtriction*, he is to offer thoſe terms to America, together with the alternative of more fire and ſword in caſe of a refuſal. Fire and ſword they certainly have no reliſh for; but ſo much of it as this angry nation can ſtill beſtow

beſtow upon them, I am perſuaded they will accept, rather than any more ſhake hands with pride and pollution. A *free* nation, governed by an *uncorrupt* legiſlature, and offering conditions worthy of *free* men, they would embrace with affection and ardour: but——

There was a time when the name of Pitt would have intimidated the whole houſe of Bourbon, and might have reconciled the coloniſts to the mother-country on the terms above mentioned: but that time has been loſt; and the earl of Chatham knows not what he attempts, if he *now* think that America is to be recovered by any conditions ſhort of her rightful independence, or if he flatter himſelf, that he can either cure the diſtractions of Great Britain, or ſhield her from the torrent of calamity which hath almoſt overtaken her, except by RESTORING THE CONSTITUTION.

Several months have now paſſed ſince I addreſſed the following ſentiment to a great perſonage:——" But, if the un-
" chriſtian ſpirit of vindictiveneſs,— if
" the narrow maxims of wordly wiſdom,
" centering always in ſelf,—if thoſe un-
" wiſe and ungenerous ſentiments, that
" will yield nothing to freedom but of
" force,—if that *fatal policy*, which de-
" pends on *the ſubtilty of its intrigues*,—
" be any longer employed, on our part,
" in this moſt intereſting cauſe, Ameri-
" ca is loſt for ever!—and far worſe
" than loſt!"

We, nevertheleſs, tried another campaign, and general Burgoyne is coming home with the account of its victories. And time is alſo to ſhew whether '*the* '*ſubtilty of intrigue*' hath not *very lately* been employed, in order to recover America by the miniſterial means of *doing no farther*

farther juſtice than could poſſibly be avoided: nor will it long be unknown, whether that '*fatal policy*' did not immediately produce, in the French cabinet, reſolutions ſo deciſive in favour of American independence, and war with Great Britain, if ſhe perſiſt to oppoſe it, as are not to be ſhaken, although lord Chatham ſhould have (as he once had, but now will not have) the heart of every Engliſhman engaged in the proſecution of a war under his guidance.

I appeal, my lord to your own ſound underſtanding, and to the law of nature in your heart, whether ſuch unnatural and prepoſterous ties, or ſuch iniquitous claims as thoſe of ours over the coloniſts, can be juſtified, although they were to be found on a thouſand parchments, and in ten thouſand acts of parliament: for I contend, upon the ſame principles as your lordſhip contends againſt like authorities in the

caſe of negro-ſlaves, (p. 45 and 46.) that the coloniſts will find "their manumiſſion "in the conſtitution of England; which, "maintaining *liberty* and annihilating "*ſlavery*, renders every ſuch act of par-"liament," grant and charter, "a *ta-*"*bula raſa*, a blank parchment, with-"out operation, without force, without "effect. *It is that conſtitution which is* "*now reſiſting the rebellion of acts of par-*"*liament*," *and the treaſon of deſtroying armies*, "*againſt it.*"

As your lordſhip ſo thoroughly de-ſpiſes *myſtery* and *expediency*, thoſe ſure marks of *faction* and *tyranny*, and have evidently the cauſe of liberty and truth ſincerely at heart; I doubt not but that you will beſtow the moſt impartial exa-mination upon what I have now offered for your conſideration: if I be wrong, I ſhall be thankful for correction; but, if I ſhall appear in your lordſhip's judgement

to

to be right, I will confide in the candour of an honeſt Engliſh nobleman; not to ſtand, as ſome eminent ſpeakers and writers have done, refuted in their doctrines on *fundanental rights of the conſtitution* without making their retraction as public as their inadvertency; but to act as becomes a man of honour who ſtands forth in defence of freedom and his country.

With much reſpect and deference,

I have the honour to be

Your Lordſhip's

Grateful fellow citizen,

And moſt obedient

Humble ſervant,

February 3, 1778.

JOHN CARTWRIGHT.

P. S. In American Independence the Intereſt and Glory of Great Britain, Letter X. and in the Poſtſcript to the ſame, p. 32—51, I gave, near three years ago, a draught of *a propoſed bill*, and the materials for *a grand Britiſh league and confederacy*, by which, in all human probability, we might have ſecured to ourſelves ſo much of a monopoly of the American commerce, as would have been *more* than an equivalent for our naval protection, and this upon *principles of juſtice and permanency*: but the decree, I fear, was gone forth for our national humiliation and chaſtiſement; ſo that neither the principles of juſtice were underſtood or regarded by a majority of our legiſlators, nor was even the moſt palpable good policy comprehended or attended to. Laſt ſpring, again, I tendered to his majeſty propoſals for recovering

recovering America and ſaving Great Britain, upon principles,—not of modern *expediency*, ſerving only to ſkin over the rotten ſores in the conſtitution, and procure peace for a few deceitful moments, but thoſe—of ſound juſtice and a comprehenſive policy, calculated for the radical cure of our *ſtate corruption*, and the cloſing effectually our breach with America, as well as for guarding againſt political evils for ages to come.‡ Other men, in like manner, have endeavoured to open the eyes

‡ I was even at that time of opinion, that it would have been moſt wiſe to have ſtipulated for a ſubſidy, to have been paid us in *money*, as our equivalent for protecting the coloniſts, *&c.* and to have left their trade entirely free, debarring only foreign bottoms from entering the American ports: this mode would have been ſimple, and free from any cauſe of irritation in future. At that period, I have very good reaſon for believing, a league and confederacy might have been formed upon ſuch a baſis: what a treaty might now procure us I will not pretend to ſay; but I know it is our duty to ceaſe hoſtilities, to acknowlege the independency of America, and to obtain the beſt terms we can.

eyes of our rulers to the *true cauſes* of our miſeries and dangers, and the *only means* by which they are to be removed and averted, but all in vain: the infatuation ſtill continues, and we ſtill exhibit all the tokens by which the decline of freedom and proſperity in a ſtate hath ever been characterized.—Whether they are to periſh altogether, and tyranny is at length to enjoy a final triumph over the Engliſh conſtitution, or whether the ſufferings prepared for us ſhall work in us a national reformation, and cauſe the conſtitution once more to triumph over tyranny, is a queſtion, the ſolution whereof, it is probable, is not afar off.—But thoſe, who truſt that the threatened evils could be averted by the wiſdom and virtues of any man whatſoever, without thoroughly expelling CORRUPTION from parliament, imagine a vain

vain thing, and truſt in that which would certainly deceive them.

THE END.

ERRATUM.

Page 27, line 4, from the bottom, for *have* been given, read *has* been given.